



Headquarters Air Force
Civilian Force Policy Division
AF/A1CP
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FAMILIES FIRST CORONAVIRUS RESPONSE ACT FACT SHEET

The **Families First Coronavirus Response Act (FFCRA)** authorizes employees paid sick leave or expanded family and medical leave for specified reasons related to COVID-19. These provisions apply from April 1, 2020 through December 31, 2020. This fact sheet provides information for civilian employees, supervisors, and managers of the Department of the Air Force.

References:

- Public Law 116-127, Families First Coronavirus Response Act, March 18, 2020
- Office of Personnel Management *Fact Sheet: Federal Employee Coverage under the Leave Provisions of the Families First Coronavirus Response Act (FFCRA)*
- Office of Personnel Management Memorandum, *Summary of Statutory and Regulatory Requirements in Connection with the Emergency Paid Sick Leave Act (EPSLA) – Application to Federal Employees*, April 22, 2020 Department of Defense, *Interim Guidance on the Emergency Paid Sick Leave and Emergency Family Medical Leave Expansion under the Families First Coronavirus Response Act*, DCPAS Message 2020039
- U.S. Department of Labor *Families First Coronavirus Response Act: Questions and Answers*
- Department of the Air Force Memorandum (A1), *Interim Implementation Guidance – Families First Coronavirus Response Act (FFCRA)*, 14 April 2020
- Headquarters Air Force, Civilian Force Policy Division, March 2020, *Telework Fact Sheet*
- Headquarters Air Force, Civilian Force Policy Division, 6 April 2020, *Weather and Safety Leave Fact Sheet*

DEFINITIONS

- Child Care Provider – An individual who provides child care services on a regular basis, including a center-based provider, a group home provider, a family provider, or other provider of child care services. Under the FFCRA, the eligible child care provider need

not be compensated or licenses if they are a family member or friend, such as a neighbor, who regularly cares for the employee's child.

- “EFMLEA” – The Emergency Family and Medical Leave Expansion Act, Division C of the FFCRA, also referred to as “Expanded FMLA”.
- “EPSLA” – The Emergency Paid Sick Leave Act, Division E of the FFCRA, also referred to as Emergency Paid Sick Leave or EPSL.
- “Son” or “Daughter” – A biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is under 18 years of age, or is 18 years of age or older and incapable of self-care because of a physical or mental disability. The meaning is the same as that provided under FMLA (29 U.S.C. 2611).
- “Subject to Quarantine or Isolation” – A broad range of governmental orders, including orders for quarantine, isolation, containment, shelter-in-place, or stay-at-home orders issued by any Federal, State, or local government authority that cause the employee to be unable to work (including telework) even though there is work for the employee to perform, but for the order. This also includes when a Federal, State, or local government authority has advised categories of citizens (e.g., of certain age ranges or of certain medical conditions) to shelter in place, stay at home, isolate or quarantine, causing those categories of employees to be unable to work/telework even though there is work for the employee to perform.
- “Health Care Providers” – For the purpose of authorized exclusions from EPSL and Expanded FMLA, the term “health care provider” is not limited to diagnosing medical professionals. Health care providers are anyone employed at a doctor’s office, hospital, health care center, clinic, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health provider, any facility that provides laboratory or medical testing, pharmacy, or any similar institution. This also includes any individual who is capable of providing health care services necessary to combat the COVID-19 public health emergency, including not only medical professionals, but also other workers who are needed to keep hospitals and similar health care facilities well supplied and operational. They further include, for example, workers who are involved in research, development, and production of equipment, drugs, vaccines, and other items needed to combat the COVID-19 public health emergency. [Note: For other FFCRA purposes, such as identifying health care providers who may diagnose an employee, advise an employee to self-quarantine for COVID-19 related reasons, and provide substantiating medical documentation as may be required, the term health care provider is the same as that used for previous Family Medical Leave Act applications; that is licensed doctors of medicine or osteopathy, and medical professionals capable of diagnosing serious health conditions, and issuing certifications regarding the nature and duration of serious health conditions.]
- “Emergency Responders” – For the purpose of authorized exclusions from EPSL and Expanded FMLA, there is a broad definition of the term emergency responder. An emergency responder is anyone necessary for the provision of transport, care, healthcare, comfort and nutrition of such patients, or others needed for the response to COVID-19. This includes, but is not limited to, military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical

services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, child welfare workers and service providers, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency, as well as who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility.

- Full-time employee – An employee who is normally scheduled to work on average at least 40 hours each workweek.
- Part-time employee – An employee who is normally scheduled to work fewer than 40 hours each workweek or, if the employee lacks a normal weekly schedule, who is scheduled to work, on average, fewer than 40 hours each workweek. (Employees with an intermittent work schedule are considered part-time employees under Division E of the FFCRA. However, a supervisor must schedule hours of work in order for an intermittent employee to use EPSL.)

COVERED EMPLOYEES

- All Department of the Air Force civilian employees are eligible for coverage by the Emergency Paid Sick Leave provision (“Division E”) in the FFCRA, regardless of how long they have worked for the agency.
- The Expanded Family and Medical Leave provision (“Division C”) does NOT apply to federal employees who are covered by Title II of the Family Medical Leave Act (FMLA). For an employee to be eligible for coverage under Division C, the employee must be employed for at least 30 calendar days prior to the leave request and be covered under Title I of the FMLA (Chapter 28 of Title 29, United States Code). Coverage under Title I of FMLA only applies to DoD employees:
 - With an intermittent work schedule (i.e., non-appropriated fund flexible employees on an intermittent work schedule);
 - Under a temporary appointment (i.e., an appointment with a time limitation of 1 year or less); or
 - Covered under unique statutory authorities that apply provisions of Title I (e.g., certain employees of the Department of Defense Education Activity).
 - An employee of the DoD who is not otherwise covered by Title II of the FMLA (i.e., the Title 5 provisions of the FMLA), such as an employee who has worked for less than one year (but more than 30 days).
- A Federal agency employing a health care provider or an emergency responder may elect to exclude such an employee from coverage under this provision.
- The Director of the Office of Management and Budget (OMB) may, for good cause, exclude certain categories of Federal employees from coverage under these provisions.
- (See the attached “Table A” and “Table B” from OPM’s Fact Sheet for specific information regarding which Federal employees are and are not covered by specific provisions.)

EMERGENCY PAID SICK LEAVE ACT (“Division E”)

- The FFCRA requires employers to provide employees with emergency paid sick leave for specified reasons related to COVID-19, unless they are in an exempted category, as further discussed below.
- This EPSL is in addition to any other paid leave entitlements.
- Depending on the circumstances, the EPSL is paid at either the Fair Labor Standards Act (FLSA)-based regular rate of pay for an employee, or two-thirds of that rate (subject to statutory limitations on daily and aggregate cash value of paid leave).
- Full-time covered employees are entitled to up to 80 hours of EPSL; part-time employees are entitled to up to the number of hours that they work on average over a 2-week period (special rules apply to part-time employees with varying schedules). This is a maximum entitlement, regardless of the number or timing of any qualifying reasons, as cited below.
- EPSL under this provision is available for use during the period from April 1, 2020, through December 31, 2020.
- Use of EPSL must cease at the commencement of the employee’s next scheduled work shift immediately following the termination of the employee’s qualifying circumstance.
- An employee qualifies for Emergency Paid Sick Leave, at the specified rates of pay, under this provision if the employee is *unable to work (or telework)* because the employee:
 1. Is subject to a federal, state, or local quarantine or isolation order related to COVID-19 (EPSL is paid at the employee’s regular rate of pay and is coded as “LV” with the environmental hazard code of “DX”);
 2. Has been advised by a health care provider to self-quarantine due to concerns related to COVID-19 (EPSL is paid at the employees regular rate of pay and is coded as “LV” with the environmental hazard code of “DX”);
 3. Is experiencing COVID-19 symptoms and is seeking a medical diagnosis from a health care provider (EPSL is paid at the employee’s regular rate of pay and is coded as “LV” with the environmental hazard code of “DX”);
 4. Is caring for an individual subject to an order as described in 1. above or directed as described in 2. above (EPSL is paid at **two-thirds** of the employee’s regular rate of pay and is coded as “LV” with the environmental hazard code of “DY”);
 5. Is caring for a son or daughter whose school or place of care has been closed for a period of time, whether by order or at the discretion of the individual place of care/provider, or the childcare provider is unavailable for reasons related to COVID-19 (EPSL is paid at **two-thirds** of the employee’s regular rate of pay and is coded as “LV” with the environmental hazard code of “DY”); or
 6. Has a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and the Secretary of Labor; (No such condition has been

specified as of the date of release of this Fact Sheet). (EPSL is paid at **two-thirds** of the employee's regular rate of pay).

IMPORTANT. Above leave codes are not programmed to account for the different rates of pay that may apply, thus their use will not prevent an employee from taking leave over the statutory limits under the FFCRA, nor enforce the statutory caps on daily or aggregate pay. Thus, the employee must be informed that a debt may be incurred and payment collected at a later date. Debt waivers for overpayment will not be considered.

- The rates of pay indicated above are subject to statutory limitations on daily and aggregate cash value of paid leave. EPSL taken at the employee's regular rate of pay (for reasons 1-3 above) is capped at \$511 per day of EPSL taken and \$5110 in total per covered employee. EPSL taken at two-thirds the employee's regular rate of pay (for reasons 4-6 above) is capped at \$200 per day of EPSL taken and \$2000 in total per covered employee.
- A supervisor may not require an employee to use other paid leave before the employee uses EPSL, nor may a supervisor require the employee to search for or find a replacement employee to cover hours during which the employee is using EPSL.
- Employees may not take EPSL where the employer does not have work (or telework) available for the employee to perform. (Please see Questions #22 and 23 below for additional information. Supervisors should consult with their servicing CPS for options in this case.)
- A holiday is a non-workday; thus EPSL may not be used on a holiday. It also may not be used on any other non-workday established by Federal statute, Executive order, or administrative order.
- When taking EPSL under reason 3 above, the leave taken is limited to time the employee is unable to work due to taking the affirmative steps to obtain a medical diagnosis, such as making, waiting for, or attending an appointment for a test for COVID-19, or while awaiting the results.
- When requesting EPSL under reason 4 above, the "individual" the employee is caring for must be an immediate family member, a person who regularly resides in the employee's home, or a similar person with whom the employee has a relationship that creates an expectation that the employee would care for the person if he or she was quarantined.
- When requesting EPSL under reason 5 above, the employee may take the leave only when the employee needs to, and actually is, caring for the son/daughter.
- Schools and places of care are considered "closed" if the physical location where children normally attend/receive care is closed, even if some or all instruction is being provided online or through some other type of "distance learning".
- Exemptions from EPSL (for health care providers, emergency responders, or other categories of employees directed by the Director of OMB) do not impact an employee's other earned or accrued sick leave or annual leave.

- The 80-hour entitlement to EPSL is per person, not per job. Should an employee change positions during the effective period, they are not entitled to a new period of EPSL.
- The 80-hour entitlement to EPSL is per person, not per qualifying reason. Once the 80-hour entitlement has been exhausted, no additional EPSL is authorized, regardless of whether additional qualifying reasons exist.
- EPSL taken at the 2/3 rate of pay may NOT be combined with any other paid leave in order to provide the employee their full rate of pay.

EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT (“Division C”)

[IMPORTANT NOTE: Most Federal employees are NOT eligible for leave under this provision, as it is applicable only to certain Federal employees covered by Title I of FMLA – most Federal employees are instead covered by Title II of the FMLA.]

- Employees covered by Division C are those who are:
 - On temporary appointments, (not-to-exceed 1 year);
 - Those employees on intermittent appointments;
 - Part-time employees who do not have an established regular tour of duty during the administrative workweek; or
 - Other Federal employees not covered by Title II of the FMLA.
- The FFCRA permits covered employees to take up to 12 weeks of Expanded FMLA leave, ten of which are paid at a partial pay rate (up to a specified cap), when an eligible employee *is unable to work, or telework*, because of a need to care for the employee’s son or daughter whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19 related reasons, and no other suitable person is available to care for the son/daughter. (It should be noted that the reason, as cited here, for taking Expanded FMLA is the same as reason 5 for taking EPSL.)
- Expanded FMLA Leave under this provision is available for use during the period from April 1, 2020, through December 31, 2020.
- Coverage of Federal employees under this provision depends on several factors:
 - The employee must be covered by Title I of FMLA, which is codified in Title 29, United States Code, and generally administered by the Department of Labor;
 - The employee must have been employed for at least 30 calendar days with the employer from whom leave is being requested. (Note: The normal FMLA requirement that the employee have at least 12 months/1250 hours of service with the employer during the previous 12-month period does not apply);
 - The employee must not be exempted due to the employer excluding them from coverage because they are a health care provider or emergency responder; and

- The employee must not be in a category for which the agency has obtained an exclusion from the Director of OMB. (As of the date of release of this Fact Sheet, the Air Force does not have any OMB approved exclusions. If any exclusions are approved in the future, the field will be appropriately notified.)
- The first 10 days of Expanded FMLA Leave is **unpaid** leave; however, the employee has the right to substitute either EPSL under Division E, or other accrued paid leave, for that initial 10-day unpaid leave period. The first 2 weeks of EFML is to be coded as LWOP “KA”.
- After the first two workweeks (usually 10 workdays), Expanded FMLA leave taken by an employee, up to 10 weeks, must be paid leave (at a partial pay rate). Time will be coded in time and attendance systems using “LV-Excused Absence” and environmental hazard code “DZ.”

IMPORTANT. Above leave codes are not programmed to account for the different rates of pay that may apply, thus their use will not prevent an employee from taking leave over the statutory limits under the FFCRA, nor enforce the statutory caps on daily or aggregate pay. Thus, the employee must be informed that a debt may be incurred and payment collected at a later date. Employees will not receive debt waivers for overpayment.

- The partial rate of pay is two-thirds of the employee’s FLSA-based regular rate of pay (subject to statutory limitations on the daily and aggregate cash value of paid leave).
- Concurrent use of accrued leave is paid at the employee’s regular rate of pay under Air Force policies. (Concurrent use means accrued leave that is used during the 10 day unpaid period.)
- The rate of pay indicated above is subject to statutory limitations on daily and aggregate cash value of paid leave. The total Expanded FMLA leave payment per employee for this 10 week period is capped at \$200 per day, \$10,000 in the aggregate (for a total of no more than \$12,000 or \$15,100 when combined with 2 weeks of EPSL taken, depending on the basis for taking the EPSL).
- An employee is entitled to up to 12 weeks of Expanded FMLA leave, which is taken under the statutory authority for FMLA; therefore, when an employee has already taken some FMLA leave in the current 12 month FMLA period, the maximum of 12 weeks of Expanded FMLA leave is reduced by the amount of other FMLA entitlement taken in that 12 month period. Similarly, any Expanded FMLA leave taken counts toward the annual entitlement to twelve workweeks of FMLA leave. If an employee requests Expanded FMLA leave and they have used leave under FMLA in the last 12 months (or vice versa), supervisors should immediately consult with their servicing CPS to obtain assistance in determining the amount of Expanded FMLA or regular FMLA leave entitlement still available.

INTERMITTENT USAGE

- EPSL and Expanded FMLA may both be taken intermittently under the FFCRA.

- EPSL or Expanded FMLA may ONLY be taken intermittently under reason 5 above. Leave taken for any other qualifying reason above may NOT take the leave intermittently. Leave taken for reasons 1-4 and reason 6 must take the leave continuously.
- In order for an employee to take leave intermittently, both the employee and supervisor must agree. Absent an agreement, no leave under the FFCRA may be taken intermittently.
- Such agreement is not required to be in writing; however, absent a written agreement, there must be a clear and mutual understanding between the employee and supervisor that the employee may take intermittent EPSL or intermittent Expanded FMLA, or both. They must also both agree on the increments of time in which leave may be taken.
- When the leave is taken intermittently, only the amount of leave actually taken may be counted toward the employee's leave entitlement.

OTHER GENERAL INFORMATION

- Regardless of the reason the employee is requesting EPSL or Expanded FMLA leave, they may only be used if the employee is *unable* to work *or* telework; in other words, they can NOT be used if the employee is able to telework. (For more information on telework, see the Headquarters Air Force *Telework Fact Sheet*, dated 27 March 2020.)
- As a general matter, the FMLA definitions apply to the EFMLEA unless specific definitions were included in the EFMLEA.
- THE FFCRA's definition of telework clarifies that telework is no less work than if it were performed at an employer's worksite, and therefore employees who are teleworking for COVID-19 related reasons must always record, and be compensated for, all hours actually worked, including overtime, in accordance with FLSA requirements.
- To minimize the spread of COVID-19, commanders are encouraged to be judicious when using exemptions within the exempted categories.
- An employee's entitlement to, or use of, EPSL or Expanded FMLA is not grounds for diminishment, reduction, or elimination of any other right or benefit to which the employee is entitled under any other law, collective bargaining agreement, or Air Force or DoD policy that existed prior to April 1, 2020.
- EPSL is in addition to, and not a substitute for, other sources of leave which the employee had already accrued, was already entitled to, or had already used, before the effective period. Therefore, neither eligibility for, nor use of, EPSL may count against an employee's balance or accrual of any other source or type of leave.
- A supervisor may not deny an employee EPSL or Expanded FMLA on the grounds that the employee has already taken another type of leave or taken leave from another source (e.g., Weather and Safety Leave, Annual Leave, Sick Leave), including leave taken for reasons related to COVID-19.
- No supervisor shall require, coerce, or unduly influence an employee to use another source of paid or unpaid leave prior to taking EPSL or Expanded FMLA.

- Unused EPSL or Expanded FMLA is not “carried over” or “paid out” upon an employee’s separation from federal employment nor upon expiration of the effective period (1 April 2020 – 31 December 2020).
- Organizations are required to post and keep posted, in conspicuous places where notices to employees are customarily posted, the model notice prepared by the Department of Labor. (See Federal employee poster at https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Federal.pdf) This posting requirement may be satisfied by emailing or direct mailing this notice to employees, or posting this notice on an employee information internal or external website.

DOCUMENTATION

- Employees must request EPSL and/or Expanded FMLA, in accordance with established leave requesting procedures, as soon as practicable after the first workday (or portion thereof) for which an employee takes the leave. If EPSL is being taken for EPSL reason #5 above, or Expanded FMLA leave is being taken, the request must be made as soon as practicable after the need for the leave is known. Notice may not be required in advance and “as soon as practicable” is determined by the facts and circumstances of each particular case. If an employee fails to properly request the leave, the supervisor should give him/her notice of the failure and an opportunity to provide the documentation prior to denying the leave request.
- The leave request must contain sufficient information for the leave approving official to determine whether the requested leave is covered under these provisions. Information required cannot exceed the following:
 - Employee’s name;
 - Date(s) for which leave is requested;
 - Qualifying reason (from EPSL reasons 1-6 above);
 - Oral or written statement that the employee is unable to work (including telework) because of the qualified reason for leave; and
 - Additional requirements based on the qualified reason –
 - If EPSL reason 1, the employee must provide the name of the government entity that issued the quarantine or isolation order;
 - If EPSL reason 2, the employee must provide the name of the health care provider who advised the employee to self-quarantine;
 - If EPSL reason 4, the employee must provide either the name of the government entity that issued the quarantine or isolation order to which the cared-for individual is subject, or the name of the health care provider who advised the cared-for individual to self-quarantine, as applicable; or
 - If EPSL reason 5 or Expanded FMLA leave, the name of the son or daughter being cared for, the name of the school or child care provider that has closed or is unavailable, and a representation that no other suitable person will be caring for the son/daughter during the requested leave period.
- The Agency is required to retain all documentation provided for four years, regardless of whether the leave was granted or denied.

RETURN TO WORK

- In most instances, an employee is entitled to be restored to the same or an equivalent position upon return from EPSL or Expanded FMLA in the same manner that an employee would be returned to work after leave under FMLA.
- Employees are not protected from employment actions, such as layoffs, that would have affected the employee regardless of whether the leave was taken.

QUESTIONS AND ANSWERS

Q1. Under the Emergency Sick Leave Act, if I use my 80 hours of EPSL for one qualifying reason, such as due to my own symptoms of COVID-19, do I get another 80 hours of EPSL for a second different qualifying reason, such as caring for my child whose school or place of care is closed for reasons related to COVID-19?

A1. No. The FFCRA only provides an employee a onetime benefit of 80 hours of EPSL to be used for any of the 6 listed qualifying reasons. Once that benefit of 80 hours has been exhausted, no additional EPSL is authorized.

Q2. If I use EPSL, will I get my full rate of pay?

A2. It depends on the qualifying reason for which you are taking EPSL as well as your individual rate of pay. The EPSL entitlement of 80 hours for full-time employees is paid at either the Fair Labor Standards Act (FLSA)-based regular rate of pay for an employee, or two-thirds of that rate (subject to statutory limitations on daily and aggregate cash value of paid leave). These rates of pay are subject to statutory limitations on daily and aggregate cash value of paid leave. EPSL taken at the employee's regular rate of pay (for qualifying reasons 1-3) is capped at \$511 per day of EPSL taken and \$5110 in total per covered employee. EPSL taken at two-thirds the employee's regular rate of pay (for qualifying reasons 4-6) is capped at \$200 per day of EPSL taken and \$2000 in total per covered employee. Part-time employees are only entitled to up to the number of hours that they work on average over a 2-week period (special rules apply to part-time employees with varying schedules).

Q3. If my employer placed me on weather and safety leave, for example due to a local health care provider recommending a 14 day self-quarantine, will I now have to retroactively use EPSL?

A3. No. Supervisors may not require any retroactive substitution of WSL. The FFCRA requires that the full benefit of EPSL and Expanded FMLA be provided REGARDLESS of whether an employee took additional paid leave (WSL, administrative leave, or any other accrued leave).

Q4. If I previously took sick leave or other chargeable or non-chargeable leave for an EPSL or Expanded FMLA qualifying reason, can I retroactively request EPSL or Expanded FMLA?

A4. Yes. EPSL and Expanded FMLA were effective 1 April 2020 and an employee may request that it be retroactively applied to that date.

Q5. Since WSL can be/has been authorized and taken by employees for EPSL qualifying reasons #1 and #2, should employee's now be required to use ESPL instead of being granted WSL?

A5. No, OPM, DoD and Air Force have issued guidance for when WSL is appropriate, which includes when an employee is asymptomatic of COVID-19 and subject to movement restrictions (i.e., quarantine or isolation) under the direction of public health authorities and when an employee is asymptomatic and directed by a medical professional, public health authority, commander, or supervisor, to not report to the worksite. These are substantively similar to EPSL qualifying reasons #1 and #2; therefore in these situations, it would be appropriate to authorize WSL. This is consistent with the goal of reducing transmission and protecting Air Force personnel and families.

Q6. I notice that the qualifying reasons for EPSL do NOT include actually having COVID-19. Am I entitled to use EPSL if I have been diagnosed with COVID-19?

A6. Yes. If someone is diagnosed as having or likely having COVID-19, it is presumed that the diagnosing health provider will recommend self-quarantine or self-isolation, or that the individual would then be ordered to quarantine/isolate. In such a case, EPSL would be authorized under the listed EPSL qualifying reasons.

Q7. Since I can use EPSL to care for my child whose school or child care facility is closed due to COVID-19, can I use my accrued sick leave instead so I get a full paycheck instead of 2/3 pay from using EPSL?

A7. No, normal sick leave is not appropriate to care for a healthy child. However, an employee may request to use their accrued annual leave, or compensatory time off for this reason, subject to normal leave requesting/approval policies and procedures.

Q8. My employee called in this morning and requested EPSL starting today for qualifying reason #5 (child care). Can I require a note from the child care provider before I approve the leave?

A8. No. Under the FFCRA, employees may provide oral notice of the need for the leave as soon as practicable after the need for leave is known. Notice may not be required in advance and "as soon as practicable" is determined by the facts and circumstances of each particular case. If an employee fails to properly request the leave, including providing the required follow up substantiating documentation, the supervisor should give him/her notice of the failure and an opportunity to provide the documentation prior to denying the leave request. (This answer assumes telework is NOT available/possible. If work IS available, including telework, then EPSL is not authorized.) Note that for reason #5, all the supervisor can request is: Employee's name; Date(s) for which leave is requested; Qualifying reason (from EPSL reasons 1-6); Oral or written statement that the employee is unable to work (including telework) because of the qualified reason for leave; and the name of the son or daughter being cared for, the name of the school or child care provider that has closed or is unavailable, and a representation that no other suitable person will be caring for the son/daughter during the requested leave period.

Q9. My employee sent me a leave request by email this morning to request EPSL for qualifying reason #2 (advised by a health care provider to self-quarantine due to COVID-19 related reasons). Can I require a note from the doctor to substantiate this request, either before approving the leave or later to support it?

A9. No. The only documentation that can be requested is that which is specified in Title 29 of the Code of Federal Regulations, part 826.100. Specifically:

- The leave request must contain sufficient information for the leave approving official to determine whether the requested leave is covered under these provisions and *cannot exceed* the following: Employee's name; Date(s) for which leave is requested; Qualifying reason (from EPSL reasons 1-6 above); Oral or written statement that the employee is unable to work (including telework) because of the qualified reason for leave; and the name of the health care provider who advised the employee to self-quarantine.
- For those taking leave due to the closure of a child's school or place of care, the employee must also provide: (1) the name of the son or daughter being cared for; (2) the name of the school, place of care, or child care provider that has closed or become unavailable; and (3) a representation that no other suitable person will be caring for the son or daughter during the period for which the leave is requested.

Under the FFCRA, employees must provide notice (and it may be oral notice) of the need for the leave (i.e., the leave request) as soon as practicable after the first workday, or portion thereof, for which an employee takes the leave. If the original email request does not contain all of the required information, you should approve the leave initially, and then follow up with the employee to obtain all of the required information. Notice may not be required in advance and "as soon as practicable" is determined by the facts and circumstances of each particular case. If an employee fails to properly request the leave, including providing the required follow up substantiating information, the supervisor should give him/her notice of the failure and an opportunity to provide the documentation prior to denying the leave request or revoking the leave.

Q10. Can my employer deny me EPSL if they already gave me another type of paid leave (such as WSL) for a reason identified as one of the qualifying reasons above?

A10. No. The FFCRA imposes a new leave requirement on employers that is effective beginning on April 1, 2020, and this entitlement is in addition to other entitlements. An employer must provide the full EPSL entitlement, regardless of any other leave that may have already been provided.

Q11. Who is responsible for keeping track of the amount of Expanded FMLA used, and/or ensuring that an employee takes the first 10 workdays as LWOP?

A11. It is an employee's responsibility to be aware of their leave balances and ensure that they are not requesting or utilizing leave beyond that to which they are entitled.

****Supervisors must advise their employees:**

- 1) That leave codes are not programmed to account for different rates of pay that may apply, and there is no system to safeguard or prevent an employee from taking leave over the statutory limits under the FFCRA, nor enforce the statutory caps on daily or aggregate pay.
- 2) A debt may be incurred and payment will be collected at a later date: employees will not receive debt waivers for these debts.

It is also recommended that supervisors have awareness of their employees' balances and entitlements to help the employee ensure they do not exceed the statutory limits of their entitlements.

Q12. I just tried to complete my timecard in ATAAPS using the directed codes; however, the subcodes DX and DY are not there yet. What do I do?

A12. The timecard should still be coded with “LV”, which is an excused paid absence. Once those subcodes are available, corrected timecards must be submitted to correct those “LV” hours to include the subcodes. **IMPORTANT. These leave subcodes are not programmed to account for the different rates of pay that may apply, thus their use will not prevent an employee from taking leave over the statutory limits under the FFCRA, nor enforce the statutory caps on daily or aggregate pay. Thus, the employee must understand that a debt may be incurred and payment collected at a later date. Employees will not receive debt waivers for overpayment.**

Q13. For those situations where only 2/3 pay is authorized (EPSL qualifying reason #5 and Expanded FMLA for childcare), if my timecard is coded properly, but the codes have not yet been programmed for the 2/3 pay rate, when will I incur a debt and how long will I have to repay it?

A13. The leave codes have not yet been coded to account for the 2/3 pay rate, and those codes will not automatically prevent an employee from taking more leave than is authorized, nor enforce the statutory caps on daily or aggregate pay. Therefore, any debt incurred based on overpayment will be collected at a later day in accordance with DFAS standard debt collection policies and procedures. Employees will not receive debt waivers for these debts and should plan accordingly with respect to excess pay they may initially accrue.

Q14. How do I know if I am covered by the Expanded Family and Medical Leave Act (Expanded FMLA) benefit?

A14. An employee’s Standard Form (SF) 50 will indicate an employee’s type of appointment. For an employee to be eligible for coverage under Division C, the employee must be employed for at least 30 calendar days prior to the leave request and be covered under Title I of the FMLA (Chapter 28 of Title 29, United States Code). Coverage under Title I of FMLA only applies to DoD employees: with an intermittent work schedule (i.e., non-appropriated fund flexible employees on an intermittent work schedule); under a temporary appointment (i.e., an appointment with a time limitation of 1 year or less); or covered under unique statutory authorities that apply provisions of Title I (e.g., certain employees of the Department of Defense Education Activity). Also, employees ineligible under Title II of the FMLA because they have not been employed for 12 months are eligible for Expanded FMLA if they have been employed for at least 30 days. The Expanded Family and Medical Leave provision (“Division C”) does NOT apply to federal employees who are covered by Title II of the Family Medical Leave Act (FMLA).

Q15. If an employee is using their own sick leave or is invoking “regular” FMLA, can I deny their request based on the exemptions authorized under the FFCRA for health care providers and first responders?

A15. The exemptions authorized under the FFCRA do NOT impact or apply to an employee’s use of earned or accrued sick leave, annual leave, or other types of leave or other paid time off. Any use of such leave would fall under the applicable law, policies and procedures for the specific type of leave/time off being requested.

Q16. I was told earlier that I’m not eligible to use regular FMLA because I haven’t been a federal employee for 12 months yet. Am I eligible to use the EPSL and/or Expanded FMLA?

A16. Individuals who are not eligible under Title II of the FMLA because they have not been employed for 12 months ARE eligible for Expanded FMLA, if they have been employed for at least 30 days. All Department of the Air Force civilian employees are eligible for EPSL

under the FFCRA, regardless of how long they have worked for the agency, UNLESS they are exempted IAW established Air Force FFCRA implementation policy.

Q17. Under Expanded FMLA, how many weeks of PAID expanded family leave do I get?

A17. Under Expanded FMLA, a covered employee may receive up to 12 weeks of leave, 10 of which are paid at the two-thirds (2/3) rate of pay; with the first 2 weeks being without pay (LWOP). However, an employee may use EPSL or other appropriate accrued leave, concurrently during the initial 2 week unpaid period.

Q18. If I am eligible for Expanded FMLA, what options are available to me to avoid going two weeks without being paid?

A18. During the first two weeks of Expanded FMLA, the employee may elect to utilize personal leave (annual leave, compensatory time off, credit hours, sick leave if appropriate, etc.). Additionally, employees under Expanded FMLA may also use the EPSL 80-hour benefit.

Q19. If I am not eligible for the Expanded FMLA under FFCRA, can I invoke “normal” FMLA for myself or to care for a family member?

A19. A person who has contracted COVID-19 and is symptomatic is deemed to have a serious health condition, as defined by FMLA guidelines, and an employee would therefore be eligible to invoke their entitlement under the FMLA to take leave to care for themselves or a family member.

Q20. Earlier this year, I invoked FMLA for a non-COVID related reason and used 6 weeks of my 12 week entitlement. My child’s school is closed, so can I take the Expanded FMLA’s full 12 week entitlement to care for my child?

A20. No. An employee’s ability to take Expanded FMLA leave depends on his or her use of FMLA leave during the previous 12-month period for non-COVID related reasons. If an employee has already taken such leave, the employee may not be able to take the full 12 weeks of Expanded FMLA. In the above situation, the employee would likely only be able to take 6 weeks of Expanded FMLA leave within the 12 month period that started on the first use of the non-COVID related FMLA use. Supervisors are encouraged to consult with their servicing CPS for assistance in determining remaining FMLA/Expanded FMLA entitlements in these types of situations.

Q21. May I take my Expanded FMLA leave intermittently while my child’s school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons?

A21. Yes, but only with your supervisor’s permission. Intermittent Expanded FMLA leave is only permitted when you and your supervisor agree upon such a schedule. For example, if you need to provide care for your young child because your child care provider is closed, you may take Expanded FMLA leave (IF you and your supervisor agree) on Mondays, Wednesdays, and Fridays, when your spouse cannot be home to care for your child, and you may work on Tuesdays and Thursdays, when your spouse is able to be home and care for the child. Supervisors and employees are encouraged to collaborate to achieve maximum flexibility.

Q22. Is all leave under the FMLA now paid leave?

A22. No. The only type of FMLA leave that is required to be paid leave is Expanded FMLA leave taken under the FFCRA when such leave exceeds 10 work days (which are unpaid days).

Q23. I know that health care providers and emergency responders, as described in the definitions section above, are exempted categories. Does a commander or supervisor have to make all employees in those categories continue to report to work? Who determines which of those employees must continue reporting and which ones can take ESPL and/or Expanded FMLA?

A23. It is not required that ALL employees in exempted categories be required to continue reporting for work. Supervisors and organizational leadership may determine which employees within categories are to be excluded from actually using the ESPL/Expanded FMLA, based on mission requirements. Likewise, supervisors and organizational leadership may support use of ESPL/Expanded FMLA where feasible and consistent with mission requirements.

Q24. What does it mean to be unable to work, including telework, for COVID-19 related reasons?

A24. You are unable to work if you are not, and cannot be made, telework eligible and ready, your employer has work for you (i.e., the installation is not closed), and one of the COVID-19 qualifying reasons prevents you from being able to perform that work, either at your normal worksite, or by means of telework. If, for example, you and your employer agree to a flexible schedule under which you will work your normal total number of hours, but may work some or all of those hours outside of your normal tour of duty (for instance late at night), then you ARE able to work and leave is not necessary nor authorized, unless something prevents you from working that schedule, such as being ill, a power outage, etc. If you are, or can be made telework ready, there is work available, and you are not prevented from working another reason (such as illness), then you are ABLE to work; you may not CHOOSE not to work and still be eligible for ESPL or Expanded FMLA.

Q25. So according to the above question, if I am ill, and there is work available to perform, I can use ESPL. But if I'm ill and my office is closed, (i.e., there is no work available), can I use ESPL in that case?

A25. No. ESPL is not authorized in situations where there is no work available to perform, even if the employee is ill. In that case, WSL should be authorized. (Supervisors should refer to the Headquarters Air Force, Civilian Force Policy Division, 6 April 2020, *Weather and Safety Leave Fact Sheet* for more information on the appropriate use of WSL, as well as consult with servicing CPS and SJA offices.)

Q26. If an employee is directed to self-quarantine by either a public or local health authority, can they be required to telework?

A26. It depends. For specific information on mandating telework, see the Headquarters Air Force *Telework Fact Sheet*, dated 27 March 2020. Under the FFCRA, a covered employee is eligible for ESPL if they are unable to work (including telework) for one of the 6 qualifying reasons cited above. Additionally, a covered employee is eligible for Expanded FMLA if they are unable to work (including telework) because of a need to care for the employee's son or daughter whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19 related reasons, and no other suitable person is available to care for the son/daughter. If the employee is able to telework, then neither ESPL nor Expanded FMLA are authorized. If an employee is telework eligible and ready, but there is a situation or condition that makes it impossible to telework (such as a power outage, or

rendering care to an ill family member or young child to the extent that they cannot also perform work, etc.), then they are no longer able to telework and EPSL/Expanded FMLA are authorized.

Q27. May I take my EPSL intermittently while working at my usual worksite (as opposed to teleworking)?

A27. It depends on why you are taking EPSL and whether your employer agrees. EPSL can only be taken intermittently qualifying reasons 1-4 or 6 IF YOU ARE TELEWORKING. If you are not teleworking, once you begin taking EPSL for one or more of these qualifying reasons, you must continue to take EPSL each day until you either (1) exhaust the 80 hour entitlement or (2) no longer have a qualifying reason for taking EPSL. The reason for this limitation on intermittent use is because the purpose of FFCRA is to provide such paid sick leave as necessary to keep you from spreading the virus to others. If you no longer have a qualifying reason for taking EPSL before you exhaust the 80 hour entitlement, you may take any remaining EPSL entitlement at a later time (until December 31, 2020) if another qualifying reason occurs.

The above limitation does not apply to qualifying reason #5. If you and your employer agree, you may take EPSL intermittently if you are taking the leave to care for your child whose school or place of care is closed, or whose child care provider is unavailable, because of COVID-19 related reasons. For example, if your child is at home because his or her school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, you may take EPSL intermittently on Mondays, Wednesdays, and Fridays to care for your child, but work at your normal worksite on Tuesdays and Thursdays.

Supervisors and employees are encouraged to collaborate to achieve maximum flexibility.

Q28. If the commander closes the base or worksite, can I take EPSL and/or Expanded FMLA leave for the period of time the base is closed?

A28. No. ESPL and Expanded FMLA are not authorized when the employer does not have work (including telework) for the employee. If the base or worksite is closed, and telework is available, the employee would be expected to telework. If telework is not available, then no work is available, and EPSL/Expanded FMLA is not authorized. You should consult with your servicing Civilian Personnel Section for options and it is likely that Weather and Safety Leave may be authorized for this situation.

Q29. If I don't use any of the EPSL or paid 10-week Expanded FMLA entitlement prior to 31 December 2020, can I "carry it over" or have it "paid out" to me?

A29. No. There is no requirement for financial or other reimbursement to an employee for unused EPSL or Expanded FMLA entitlement, either at expiration of the effective period or upon separation from federal employment.

Q30. I just transferred from another Federal agency and previously used 5 days of EPSL while at that Agency. Do I get another 80 hours of entitlement with my new agency?

A30. No. The EPSL and Expanded FMLA entitlements are per person, not per job or qualifying reason. The EPSL entitlement is capped at 80 hours and the Expanded FMLA entitlement is capped at 12 weeks (10 of which are paid.) In this situation, you would only have 5 days of your EPSL entitlement remaining to use.

Table A, below, identifies categories of Federal employees who are **not** eligible for the Expanded Family and Medical Leave under FFCRA because they are covered under Title II of the FMLA, which is codified in Title 5 of the United States Code. Table B, below, identifies Federal employees who **are** covered under Division C of the FFCRA, because they are covered under Title I of FMLA. Employees who otherwise qualify for coverage under Division C may be exempted, as described in the above Fact Sheet.

Table A Federal Employees Who Are Covered by the Family and Medical Leave Act (FMLA) Provisions in Title 5, United States Code and Who, Therefore, Are Not Covered by the Expanded Family and Medical Leave Provisions Enacted in Division C of the Families First Coronavirus Response Act (FFCRA)	
Category	Notes
<p>Any employee appointed in the civil service who meets the definition of “employee” in 5 U.S.C. 2105, but <u>excluding</u>—</p> <ul style="list-style-type: none"> • employees not covered by the title 5 annual and sick leave system, except as otherwise provided in this table; • employees of the District of Columbia Government, the Government Accountability Office (GAO), and the Library of Congress (LOC); and • temporary or intermittent employees. 	<p>See 5 U.S.C. 6381(1)(A) and 6301(2).</p> <p>NOTE 3: Employees with intermittent work schedules are specifically excluded by language in section 6381(1)(A) but also would have been excluded based on the reference to section 6301(2)(ii).</p> <p>The following categories of employees are excluded from coverage under the title 5 FMLA provisions based on exclusion from the title 5 annual and sick leave system:</p>

<p>NOTE 1: Employees of the United States Postal Service and the Postal Regulatory Commission are not considered employees for the purpose of title 5 leave provisions. (See 5 U.S.C. 2105(e).) Other Executive branch employees are covered by title 5 FMLA provisions unless a specific exclusion applies to them. (See the right column and NOTE 5 at the end of this table.)</p> <p>NOTE 2: Judicial branch employees are generally covered by title 5 leave provisions, including title 5 FMLA provisions. (Except for certain article I courts, the Administrative Office of the United States Courts is responsible for addressing leave coverage issues for Judicial branch employees.)</p>	<ul style="list-style-type: none"> • an employee of either House of Congress or of the two Houses (section 6301(2)(vi)); • a leave-exempt Presidential appointee as described in section 6301(2)(x)-(xiii); and • other employees described in section 6301(2)(iii), (vii), or (viii). <p>NOTE 4: See more information on Legislative branch employees in the row below dealing with employees of the Government Publishing Office.</p>
<p>An employee of the Veterans Health Administration who is covered by a leave system established under 38 U.S.C. 7421, excluding any temporary or intermittent employee.</p>	<p>Although not covered by the title 5 annual and sick system, these employees are covered by the title 5 FMLA provisions. (See reference to section 6301(2)(v) in 5 U.S.C. 6381(1)(A) and OPM regulations at 5 CFR 630.1201(b)(3)(i) and (4).) Note: See also 38 U.S.C. 7421</p>
<p>A Department of Defense teacher holding a “teaching position” as defined in 20 U.S.C. 901, excluding any temporary or intermittent employee.</p>	<p>Although not covered by the title 5 annual and sick system, these employees are covered by the title 5 FMLA provisions. (See reference to section 6301(2)(ix) in 5 U.S.C. 6381(1)(A) and OPM regulations at 5 CFR 630.1201(b)(3)(ii) and (4).)</p>
<p>An employee of a nonappropriated fund instrumentality associated with the armed forces, as described in 5 U.S.C. 2105(c), excluding any temporary or intermittent employee.</p>	<p>Although not covered by the title 5 annual and sick system, these employees are covered by the title 5 FMLA provisions. (See 5 U.S.C. 2105(c)(1)(E) and OPM regulations at 5 CFR 630.1201(b)(3)(iii) and (4).)</p>
<p>An employee of the Government Publishing Office (GPO), excluding any temporary or intermittent employee.</p>	<p>GPO employees are civil service employees covered by the title 5 annual and sick leave system. This is the only category of employees in the Legislative branch covered by the title 5 FMLA provisions. The first row of this table identified exclusions of GAO employees, Library of Congress employees, and employees of the two Houses. Other Legislative branch employees are excluded because they are covered by the title 29 FMLA provisions pursuant to the Congressional Accountability Act of 1995. (See 2 U.S.C. 1301(3), 1302(a)(5), and 1312.) The Office of Congressional Workplace Rights administers the title 29 FMLA provisions for covered Legislative branch employees. GPO employees are not covered by the Congressional Accountability Act.</p>

<p>A Transportation Security Administration (TSA) employee who serves as a Transportation Security Officer (i.e., screeners), excluding any temporary or intermittent employee.</p>	<p>See section 7606 of subtitle A of title LXXVI of division F of Public Law 116-92, S. 1790, December 20, 2019. Section 7606 amended a law addressing the coverage of TSA screeners under various personnel laws, and expressly provided that TSA screeners are covered by the title 5 FMLA provisions. (See amendment to section 111(d)(2) of the Aviation and Transportation Security Act (49 U.S.C. 44935 note).) TSA screeners are not covered by the title 5 annual and sick leave system.</p>
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NOTE 5: Some Federal employees would be otherwise covered by the title 5 FMLA provisions but for coverage under special personnel authorities possessed by their employing agency. Those special personnel authorities fall into one of two categories: (1) the law excludes their employees from coverage under the title 5 leave provisions; or (2) the law gives the agency discretionary authority to determine whether their employees are covered under the title 5 leave provisions. Agencies with special personnel authorities are responsible for informing their employees regarding whether the title 5 FMLA provisions apply. The general rule is that Federal employees who are not covered by the title 5 FMLA provisions are covered by the title 29 FMLA provisions (i.e., title I of FMLA). (See 29 U.S.C. 2611(2)(B)(i) and 29 CFR 825.109(c).) However, an agency with special personnel authorities may have a basis for determining that its employees are exempt from both the title 5 and the title 29 FMLA provisions.

<p align="center">Table B Federal Employees Covered by the Expanded Family and Medical Leave Provisions Enacted in Division C of the Families First Coronavirus Response Act (FFCRA)</p>	
<p align="center">Category</p>	<p align="center">Notes</p>
<p>Employees of the United States Postal Service or the Postal Regulatory Commission</p>	<p>They are not covered by the title 5 FMLA provisions based on 5 U.S.C. 2105(e), read with 29 U.S.C. 2611(2)(B)(i).</p>
<p>Legislative branch employees, <i>except</i> employees of the <i>Government Publishing Office</i>.</p>	<p>See information on Legislative branch employees in Table A.</p>
<p>An employee with an intermittent work schedule (i.e., not part-time or full-time, no guarantee of any hours of work in any pay period).</p>	<p>See 5 U.S.C. 6381(1)(A), read with 29 U.S.C. 2611(2)(B)(i).</p>
<p>An employee with a temporary appointment (i.e., an appointment with a time limitation of one year or less).</p>	<p>See 5 U.S.C. 6381(1)(A), read with 29 U.S.C. 2611(2)(B)(i). No FMLA leave would be available after the temporary appointment ends.</p>
<p>An employee of an Executive branch agency who is not covered by title II of FMLA (i.e., title 5 FMLA provisions)—unless the agency has exercised a special personnel authority in statute to</p>	<p>See 29 U.S.C. 2611(2)(B)(i) and 29 CFR 825.109(c). See Table A—in particular, the first row and NOTE 5. Agencies with special personnel authorities are responsible for informing their</p>

exempt its employees from coverage under title I of FMLA (i.e., title 29 FMLA provisions).	employees regarding whether the FMLA provisions under title 5 or title 29 apply and whether division C of the FFCRA applies.
NOTE: The Director of OMB may, for good cause, exclude certain categories of Federal Executive branch employees from the paid expanded family and medical leave. The OMB Director's exemption authority does not provide a complete exemption from division C; rather it applies only to the paid leave provisions in section 110(b) of title I of FMLA. This means that these employees would still be entitled to receive FMLA job-protected unpaid leave under 29 U.S.C. 2612(a)(1)(F).	